

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DONALD ROBIN BARREN,

Petitioner,

vs.

HOWARD SKOLNIK, *et al.*,

Respondents.

2:09-cv-01202-RLH-LRL

ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a Nevada state prisoner. This Court has not yet had the opportunity to rule on the merits of petitioner's habeas corpus petition. Yet, on August 4, 2011, petitioner filed a notice of appeal. (ECF No. 61). The Court construes the notice of appeal as an application for a certificate of appealability.

In order to proceed with his appeal, petitioner must receive a certificate of appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9th Cir. R. 22-1; *Allen v. Ornoski*, 435 F.3d 946, 950-951 (9th Cir. 2006); *see also United States v. Mikels*, 236 F.3d 550, 551-52 (9th Cir. 2001). Generally, a petitioner must make "a substantial showing of the denial of a constitutional right" to warrant a certificate of appealability. *Id.*; 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). "The petitioner must demonstrate that reasonable jurists would find the district court's

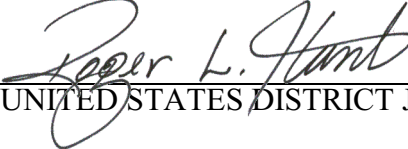
1 assessment of the constitutional claims debatable or wrong.” *Id.* (quoting *Slack*, 529 U.S. at 484). In
2 order to meet this threshold inquiry, the petitioner has the burden of demonstrating that the issues are
3 debatable among jurists of reason; that a court could resolve the issues differently; or that the
4 questions are adequate to deserve encouragement to proceed further. *Id.*

5 In the present case, the Court has not entered an order denying the habeas petition.
6 Regarding the orders entered thus far in this case, no reasonable jurist could conclude that the
7 Court’s orders were in error. Petitioner is not entitled to a certificate of appealability.

8 **IT IS THEREFORE ORDERED** that the application for a certificate of appealability (ECF
9 No. 61) is **DENIED**.

10 **IT IS FURTHER ORDERED** that the Clerk shall send a copy of this order to the United
11 States Court of Appeals for the Ninth Circuit.

12 Dated this 25TH day of August, 2011.

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15 UNITED STATES DISTRICT JUDGE
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